

(1) New

FILED

FEB 29 2008

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAPETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name Turner Ishmael Z
 (Last) (First) (Initial)

Prisoner Number H-49812Institutional Address San Quentin State Prison, San Quentin, Ca 94974

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Ishmael Zakat Turner

CV 08 - 1226

Full Name of Petitioner

Case No.(To be provided by the
clerk of court)

vs.

Warden of San Quentin

PETITION FOR A WRIT OF HABEAS CORPUS

Name of Respondent
(Warden or jailor)

(PR)

Read Comments Carefully Before Filling InWhen and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your

petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

The sentence of incarceration.

(a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

San Mateo County Superior Court	Redwood City
Court	Location
(b) Case number, if known <u>C-28824-01</u>	
(c) Date and terms of sentence <u>09/18/92, 76.6 years</u>	
(d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) <u>(Yes)</u> No	
Where? <u>San Quentin State Prison</u> (Name of Institution)	<u>San Quentin, Ca. 94974</u> (Address)

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

Sexual Assault in Concert, 264.1/261(a)(2), 286(d), 664/288a(d), 288a(d)

3. Did you have any of the following?

Arraignment: Yes X No Preliminary Hearing: Yes X No Motion to Suppress: Yes No X

4. How did you plead?

Guilty _____ Not Guilty Nolo Contendere _____

Any other plea (specify) _____

5 If you went to trial, what kind of trial did you have?

Jury Judge alone _____ Judge alone on a transcript _____

6. Did you testify at your trial? Yes No _____

7. Did you have an attorney at the following proceedings:

- (a) Arraignment Yes No _____
- (b) Preliminary hearing Yes No _____
- (c) Time of plea Yes No _____
- (d) Trial Yes No _____
- (e) Sentencing Yes No _____
- (f) Appeal Yes No _____
- (g) Other post-conviction proceeding Yes _____ No

8. Did you appeal your conviction? Yes No _____

(a) If you did, to what court(s) did you appeal?

Court of Appeal	Yes <input checked="" type="checkbox"/>	No _____	<u>1994</u> (Year)	<u>Affirmed</u> (Result)
Supreme Court of California	Yes <input checked="" type="checkbox"/>	No _____	<u>1994</u> (Year)	<u>Denied Review</u> (Result)
Any other court	Yes _____	No <input checked="" type="checkbox"/>	_____ (Year)	_____ (Result)

(b) If you appealed, were the grounds the same as those that you are raising in this petition? Yes _____ No

(c) Was there an opinion? Yes No _____

(d) Did you seek permission to file a late appeal under Rule 31(a)? Yes _____ No

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes No

Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. § 2244(b).

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court Superior Court of San Mateo

Type of Proceeding Habeas Corpus Petition

Grounds raised (Be brief but specific):

- a. Sentence imposed by court was unconstitutional and exceeds maximum.
- b. Sentencing court abused discretion by sentencing to consecutive terms.
- c. _____
- d. _____

Result Denied (See Attached Exhibit #2) Date of Result 05/24/07

II. Name of Court Court of Appeal, State of California, First Appellate Dist.

Type of Proceeding Same as above (Habeas Corpus Petition)

Grounds raised (Be brief but specific):

- a. Issues same as above
- b. _____
- c. _____
- d. _____

Result Denied (See Attached Exhibit #3) Date of Result 07/25/07

III. Name of Court Supreme Court of California

Type of Proceeding Same as above

Grounds raised (Be brief but specific):

a. Issues same as above

b. _____

c. _____

d. _____

Result Denied (See Attached Exhibit #4) Date of Result 01/30/08

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court? Yes No X

(Name and location of court)

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you need more space. Answer the same questions for each claim.

Note: You must present ALL your claims in your first federal habeas petition. Subsequent petitions may be dismissed without review on the merits. 28 U.S.C. § 2244(b); McCleskey v. Zant, 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).

Claim One: The trial court imposed additional time based on factors not

found by the jury nor admitted by the petitioner.

Supporting Facts: Petitioner was found guilty of an offense at trial, which would subject him to a standard midterm sentence, but he was sentenced to upper terms when the court found additional facts and determined that those aggravating factors justified the greater sentence. (See Exhibit #1, Sentencing Transcript)

Claim Two: The trial court abused its discretion when it sentenced petitioner to consecutive upper terms based on factors not found by the jury.

Supporting Facts: Petitioner was sentenced to consecutive upper terms when the court found additional facts and determined that those aggravating factors justified the greater sentence. (See Attached Exhibit #1 Sentencing Transcript)

Claim Three: _____

Supporting Facts: _____

If any of these grounds was not previously presented to any other court, state briefly which grounds were not presented and why:

List, by name and citation only, any cases that you think are close factually to yours so that they are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning of these cases:

Apprendi v. New Jersey (2000) 530 U.S. 466, 490 [120 S. Ct. 2248, 147 L.Ed.2d 1435], Blakely v. Washington (2004) 542 U.S. 296, Cunningham v. California (2007) U.S. , 127 S.Ct. 856, 2007, Jones v. United States, 526 U.S. 227, 119 S. Ct. 1215, 143 L. Ed. 2d 311 (1999)

Do you have an attorney for this petition? Yes No x

If you do, give the name and address of your attorney:

WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

Executed on

2/25/08

Date

John Michael Turner
Signature of Petitioner

Name Ishmael TurnerAddress CSP-San Quentin 1-N-100 upSan Quentin, CA 94974CDC or ID Number H-49812

**SUPREME COURT
FILED**

AUG 07 2007

Frederick K. Ohlrich Clerk

Deputy

(Court)

PETITION FOR WRIT OF HABEAS CORPUS

S155162

No.

(To be supplied by the Clerk of the Court)

Ishmael Turner

Petitioner

vs.

Warden of San Quentin

Respondent

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
 - If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form before answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rule 60 of the California Rules of Court [as amended effective January 1, 2005]. Subsequent amendments to Rule 60 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

This petition concerns:

- | | |
|--|--|
| <input type="checkbox"/> A conviction | <input type="checkbox"/> Parole |
| <input checked="" type="checkbox"/> A sentence | <input type="checkbox"/> Credits |
| <input type="checkbox"/> Jail or prison conditions | <input type="checkbox"/> Prison discipline |
| <input type="checkbox"/> Other (specify): _____ | |

1. Your name: Ishmael Zakat Turner

2. Where are you incarcerated? San Quentin State Prison

3. Why are you in custody? Criminal Conviction Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

Sexual Assault in Concert

b. Penal or other code sections: 264.1/261(a)(2), 286(d), 664/288a(d), 288a(d)

c. Name and location of sentencing or committing court: Superior Court of the State of California,
County of San Mateo

d. Case number: C-28824-01

e. Date convicted or committed: 08-19-92

f. Date sentenced: 09-18-92

g. Length of sentence: 76.6 years

h. When do you expect to be released? 09/2031

i. Were you represented by counsel in the trial court? Yes. No. If yes, state the attorney's name and address:

Edward C. Pomeroy, 605 Middlefield Rd., Redwood City, Ca 94063

4. What was the LAST plea you entered? (check one)

Not guilty Guilty Nolo Contendere Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

Jury Judge without a jury Submitted on transcript Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

Sentence imposed by court was unconstitutional and exceeds maximum prescribed by law.

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

Petitioner's 6th Amendment right to a jury finding on the aggravating circumstances were violated. Trial court violated the separation of powers doctrine and invaded the province of the jury. The aggravating factors relied upon by the court never found by the jury. (See Attached Exhibit #1, Abstract of Judgment and Sentencing Transcript)

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

Apprendi v. New Jersey, Cunningham v. California, In re Winship, Due process Clause of the 6th and 14th Amendments of U.S. Constitution, Blakely v. Washington, Ring v. Arizona, U.S. v. Booker

7. Ground 2 or Ground _____ (if applicable):

Sentencing Court abused its discretion when it sentenced petitioner
to consecutive terms.

a. Supporting facts:

Petitioner's 6th Amendment right to a jury finding on the aggravating
circumstances were violated. The aggravating factors relied upon by the
court never found by the jury. (See Attached Exhibit #1, Abstract of Judgment
and Sentencing Transcript.)

b. Supporting cases, rules, or other authority:

Apprendi v. New Jersey, Cunningham v. California, In re Winship, Due process
Clause of the 6th and 14th Amendments of U.S. Constitution, Blakely v.
Washington, Ring v. Arizona, U.S. v. Booker

8. Did you appeal from the conviction, sentence, or commitment? Yes. No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

The California Court of Appeal

b. Result Affirmed

c. Date of decision: After February 1994

d. Case number or citation of opinion, if known: A059163

e. Issues raised: (1) Not applicable to this petition

(2) _____

(3) _____

f. Were you represented by counsel on appeal? Yes. No. If yes, state the attorney's name and address, if known:

David Carico, 215 W. Franklin St. #309, Monterey, Ca. 93940

9. Did you seek review in the California Supreme Court? Yes No. If yes, give the following information:

a. Result N/A to this petition

b. Date of decision: _____

c. Case number or citation of opinion, if known: _____

d. Issues raised: (1) _____

(2) _____

(3) _____

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

IAC and claim not ripe

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

N/A

b. Did you seek the highest level of administrative review available? Yes. No.

Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? Yes. If yes, continue with number 13. No. If no, skip to number 15.

13. a. (1) Name of court: Superior Court of San Mateo

(2) Nature of proceeding (for example, "habeas corpus petition"): Habeas Corpus Petition

(3) Issues raised: (a) Sentence imposed by court was unconstitutional and exceeds maximum.

(b) Sentencing court abused discretion by sentencing to consecutive terms.

(4) Result (Attach order or explain why unavailable): Denied (See Attached Exhibit #2)

(5) Date of decision: 05/24/07

b. (1) Name of court: Court of Appeal, State of California, First Appellate District

(2) Nature of proceeding: Same as above (Habeas Corpus Petition)

(3) Issues raised: (a) Issues same as above

(b) _____

(4) Result (Attach order or explain why unavailable): Denied (See Attached Exhibit #3)

(5) Date of decision: 07/25/07

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

None (N/A)

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

Petitioner exercised due diligence and law was not applied

16. Are you presently represented by counsel? Yes. No. If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? Yes. No. If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

This is the court of proper jurisdiction.

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: 8/1/07

► Jahmeal Turner
(SIGNATURE OF PETITIONER)

EXHIBIT

(#1)

EXHIBIT 1

2710-200

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO

HONORABLE JUDITH WHITMER KOZLOSKI JUDGE DEPT. 10 LINDA FITZGIBBON
 Date 9/18/92 PAM FISK

Deputy Clerk
 Reporter

CASE NO.	C 28824-01	(Parties and counsel checked if present)	Present
PEOPLE OF THE STATE OF CALIFORNIA		District Attorney	
		By	Sandra Vanderveen
ISHMAEL TURNER vs ISHMAEL ZAKAT MUHAMMAD,		Deputy Counsel	DDA XX
vs 264.1/261(A)(2)PC, vs 286(D)PC, vs 264.1/261(A)(2)PC,		Edward Pomeroy	XX
CHARGE	vs 264.1/261(A)(2)PC, vs 264.1/261(A)(2)PC vs 664/288A(D)PC, vs 288A(D)PC, vs 264.1/261(A)(2)PC, vs		
NATURE OF PROCEEDINGS	264.1/261(A)(2)PC, vs 264.1/261(A)(2)PC, vs 288A(D)PC, vs 288A(D)PC, vs 288A(D)PC, vs 264.1/261(A)(2),		
vs 264.1/261(A)(2)PC, vs 264.1/261(A)(2)PC, vs 288A(D)PC, vs 288A(D)PC, vs 288A(D)PC, vs 264.1/261(A)(2),			
vs 264.1/261(A)(2)PC, vs 264.1/261(A)(2)PC			
<input checked="" type="checkbox"/> Defendant not present	<i>+ custodial</i>		
<input type="checkbox"/> Private Defender appointed with _____ designated.			
<input type="checkbox"/> Assistant Probation Officer _____ not present.			
<input type="checkbox"/> Defendant states true name as _____			
<input type="checkbox"/> Defendant was handed a copy of the Certification pursuant to Section 859(a)PC. was arraigned on same, and reaffirmed plea made in Municipal Court.			
On		motion	
		continued to	
<input checked="" type="checkbox"/> Probation Report/	<i>Memorandum of D.A.</i>	received, reviewed and ordered filed.	
<input type="checkbox"/> Supplemental Probation Report/		ordered.	
<input type="checkbox"/> Criminal proceedings suspended, Sheriff ordered to deliver defendant to the Department of Corrections diagnostic facility at Vacaville, Ca/ Corona, CA for diagnosis and evaluation pursuant to Sec. 1203.03 PC for a temporary period not to exceed ninety days.			
<input type="checkbox"/> Defendant and counsel waived time for sentencing.			
<input checked="" type="checkbox"/> Defendant waived formal arraignment for judgment and states there is no legal cause why sentence should not now be pronounced.			
<input type="checkbox"/> Imposition of sentence suspended.		<input checked="" type="checkbox"/> Defendant sentenced per attachment.	<input type="checkbox"/> Sentence suspended.
<input type="checkbox"/> Probation denied. <input type="checkbox"/> Formal/Court Probation granted for a period of _____ per conditions on attachment.			
<input type="checkbox"/> Conditions of Probation accepted by defendant.			
<input checked="" type="checkbox"/> Defendant advised of period of parole pursuant to Section 1170.1 PC.			
<input checked="" type="checkbox"/> Defendant advised of right to appeal, appeal procedure and right to appointed counsel pursuant to Rule 250, California Rules of Court.			
<input type="checkbox"/> Defendant failing to appear, without sufficient excuse		<input type="checkbox"/> Bail foreited	<input type="checkbox"/> O.R. revoked.
<input type="checkbox"/> Bench Warrant ordered issued with no bail/bail fixed at \$ _____			
<input type="checkbox"/> Defendant appearing		<input type="checkbox"/> Bench Warrant recalled	<input type="checkbox"/> Bail/O.R. reinstated.
Motion for issuance of Bench Warrant/Forfeiture of Bail/Revocation of O.R. submitted/called to _____			

CASE NO. 28624 PEOPLE OF THE STATE OF CALIFORNIA vs. Ishmael Turner
 (Sentencing Attachment - State Prison)

Sentence is imposed as follows:

Defendant is committed to: Department of Corrections for
 CT. 6 to the (A) term of 4 years 6 months California Youth Authority (pursuant to Sec. 1731.5(b) WIC) for
 CTS. 1, 7, 10, 12, 13, 14, 15, & 16 (A) term of 9 years on each consecutive to each other & consecutive to ct. 6.
 ct. 2 to the (A) term of 9 years concurrent w/ct. 1 consecutive to ct. 6, stayed pending appeal on ct. 1 to become permanent upon completion of sentence on ct. 1.
 cts. 3, 4, & 5 to the (A) term of 9 years on each concurrent one to the other & ct. 7, consecutive to cts. 6, 1, & 2, stayed pending appeal on ct. 7 to become permanent upon completion of sentence on ct. 7.
 cts. 8 & 9 to the (A) term of 9 years on each concurrent one to the other & ct. 12, consecutive to cts. 6, 1, 2, 3, 4, 5 & 7, stayed pending appeal on ct. 12 to become permanent upon completion of sentence on ct. 12.
 ct. 11 to the (A) term of 9 years concurrent to ct. 10, consecutive to cts. 6, 1, 2, 3, 4, 5, 7, 8, 9 & 12, stayed pending appeal on ct. 10 to become permanent upon completion of sent. on ct. 10. Cts. 17, 18, & 19 to the (A) term of 9 years on each consecutive / concurrent to the other & ct. 16, consecutive to cts. 6, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 & 12 stayed pending appeal on ct. 16 to become permanent upon completion of sentence on ct. 16.
 Credit for 196 actual days served, plus 98 days good time / work time for a total of 294 days. Defendant to be delivered by the Sheriff to the Director of Corrections:

California State Central California to be housed at California
 Prison, Women's Facility, Youth Authority, pursuant
 San Quentin Chowchilla to Sec. 1731.5(c) WIC

Defendant to be brought before this Court for further proceedings if not accepted by CYA.

Defendant shall pay a \$100.00 restitution fund fine as mandated by Government Code Section 13967.

Defendant shall pay fine of \$ _____ plus penalty assessment of \$ _____ plus
 \$ _____ pursuant to Section 11372.5 H&S plus \$ _____ pursuant to Section 11372.7 H&S.
 Pay fine of \$ 100 pursuant to Section 290.3PC.

Payments to be made to Revenue Services. Payment due date if total fines payable are \$500.00 and over

Genetic marker testing pursuant to Section 290.2PC.

AIDS testing pursuant to Section 1202.1PC.

292 399

ABSTRACT OF JUDGMENT - PRISON COMMITMENT

FORM DSL 29

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO

BRANCH

COURT I.D.

4 1

CASE NUMBER (S)

PEOPLE OF THE STATE OF CALIFORNIA versus

 PRESENT

C28824-01

- A

DEFENDANT: ISHMAEL TURNER
AKA: NOT PRESENT

- B

- C

- D

- E

COMMITMENT TO STATE PRISON
ABSTRACT OF JUDGMENTAMENDED
ABSTRACT

DATE OF HEARING (MO) (DAY) (YR)

DEPT. NO

JUDGE

CLERK

9/18/92

10

JUDITH WHITMER KOZLOSKY

LINDA FITZGERALD

REPORTER

COUNSEL FOR PEOPLE

COUNSEL FOR DEFENDANT

PROBATION NO. OR PROBATION OFFICER

PAM FISK

SANDRA VANDERVEEN

EDWARD POMEROY

NONE PRESENT

1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONIES (OR ALTERNATE FELONY/MISDEMEANORS):

 ADDITIONAL COUNTS ARE LISTED ON ATTACHMENT (NUMBER OF PAGES)

COUNT	CODE	SECTION NUMBER	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION			CONVICTED BY			TERM (M.A.U.)	CONCURRENT	CONSECUTIVE 1/3 VIOLENT	CONSECUTIVE 1/3 NON-VIO	CONSECUTIVE FULL TERM	INCOMPLETE SENTENCES (CS-REFER #4)	654 STAY	PRINCIPAL OR CONSECUTIVE TIME IMPOSED	YEARS MONTHS
					MO	DAY	YEAR	JURY TRIAL	COURT TRIAL	PLEA									
6	PC	664/288a(d)	attempted forcible oral cop.	92	08	19	92	X		U							4	6	
1	PC	261(a)(2)/264.1	rape in concert	92	08	19	92	X		U							9		
7	PC	288(a)(d)	forcible oral cop. in concert	92	08	19	92	X		U							9		
10	PC	261(a)(2)/264.1	rape in concert	92	08	19	92	X		U							9		
12	PC	261(a)(2)/264.1	rape in concert	92	08	19	92	X		U							9		

2. ENHANCEMENTS charged and found true TIED TO SPECIFIC COUNTS (mainly in the § 12022-series) including WEAPONS, INJURY, LARGE AMOUNTS OF CONTROLLED SUBSTANCES, BAIL STATUS, ETC.: For each count list enhancements horizontally. Enter time imposed for each or "S" for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1385.

Add up time for enhancements on each line and enter line total in right-hand column.

Count	Enhancement	Yrs or "S"	Total												

3. ENHANCEMENTS charged and found true FOR PRIOR CONVICTIONS OR PRIOR PRISON TERMS (mainly § 667-series) and OTHER.

List all enhancements based on prior convictions or prior prison terms charged and found true. If 2 or more under the same section, repeat it for each enhancement (e.g., if 2 non-violent prior prison terms under § 667.5(b) list § 667.5(b) 2 times). Enter time imposed for each or "S" for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1385. Add time for these enhancements and enter total in right-hand column. Also enter here any other enhancement not provided for in space 2.

Enhancement	Yrs or "S"	Total												

4. INCOMPLETED SENTENCE(S) CONSECUTIVE:

CREDIT FOR

5. OTHER ORDERS TESTING PURS. TO PC SEC. 290.2 and 1202.1 ordered

**ABSTRACT OF JUDGMENT – PRISON COMMITMENT
ATTACHMENT PAGE**

FORM DSL 290-1

(ENDORSED)

FILED

SEP 21 1992

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO

DATE OF HEARING
(MO) (DAY) (YR)
09 18 92

1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONIES (OR ALTERNATE FELONY/MISDEMEANORS):

SENTENCE RELATION

THIS IS ATTACHMENT PAGE NO. 2

THIS IS ATTACHMENT PAGE NO. <u>2</u>				YEAR CRIME COMMITTED	DATE OF CONVICTION			CONVICTED BY			TERM (L.M.U.)	CONCURRENT	CONSECUTIVE TO VIOLENT	CONSECUTIVE TO NON-VIO.	CONSECUTIVE FULL TERM	INCOMPLETE SENTENCE(S) CS REFER A4	654 STAY	PRINCIPAL OR CONSECUTIVE TIME IMPOSED
COUNT	CODE	SECTION NUMBER	CRIME		MO	DAY	YEAR	JURY TRIAL	COURT TRIAL	PLEA								
13	PC	288(a)(d)	forcible oral cop. in concert	92	08	19	92	x		U				x			9	
14	PC	288(a)(d)	forcible oral cop. in concert	92	08	19	92	x		U				x			9	
15	PC	288(a)(d)	forcible oral cop. in concert	92	08	19	92	x		U				x			9	
16	PC	288(a)(d)	forcible oral cop. in concert	92	08	19	92	x		U				x			9	
2	PC	286(d)	forcible sodomy in concert	92	08	19	92	x		U	x						(9)	
3	PC	261(a)(2)/264.1	rape in concert	92	08	19	92	x		U	x						(9)	
4	PC	261(a)(2)/264.1	rape in concert	92	08	19	92	x		U	x						(9)	
5	PC	261(a)(2)/264.1	rape in concert	92	08	19	92	x		U	x						(9)	
8	PC	261(a)(2)/264.1	rape in concert	92	08	19	92	x		U	x						(9)	
9	PC	261(a)(2)/264.1	rape in concert	92	08	19	92	x		U	x						(9)	
11	PC	261(a)(2)/264.1	rape in concert	92	08	19	92	x		U	x						(9)	
17	PC	261(a)(2)/264.1	rape in concert	92	08	19	92	x		U	x						(9)	
18	PC	261(a)(2)/264.1	rape in concert	92	08	19	92	x		U	x						(9)	
19	PC	261(a)(2)/264.1	rape in concert	92	08	19	92	x		U	x						(9)	
																	TOTAL	36

2. ENHANCEMENTS charged and found true, TIED TO SPECIFIC COUNTS (mainly in the 12D22 series) for counts listed on this page.

Cal

H49812

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 COUNTY OF SAN MATEO

(ENDORSED)
FILED

OCT 28 1992

3 PEOPLE OF THE STATE OF CALIFORNIA,) WARREN SLOCUM, County Clerk
4) By VIRGILIO S. CASTRO
5 PLAINTIFF,) DEPUTY CLERK
6 VS.) NO. C-28824
7 ISHMAEL ZAKAT TURNER,)
8 DEFENDANT.)
_____)

9 REPORTER'S TRANSCRIPT OF PROCEEDINGS
1011 BEFORE: HON. JUDITH W. KOZLOSKI, JUDGE
12 DEPARTMENT 1013 SEPTEMBER 18, 1992
14 *Ajd* 2-4-9315 A P P E A R A N C E S:

16 FOR THE PEOPLE: JAMES P. FOX, DISTRICT ATTORNEY
17 OF SAN MATEO COUNTY
BY: SANDRA VANDERVEEN, DEPUTY
HALL OF JUSTICE AND RECORDS
401 MARSHALL STREET
REDWOOD CITY, CALIFORNIA 94063

18
19 FOR THE DEFENDANT: THE PRIVATE DEFENDER PANEL
20 BY: EDWARD POMEROY

21
22 REPORTED BY: PAMELA FISK, CSR #1807

23

24

25

26

1

P R O C E E D I N G S

2

3 REDWOOD CITY, CALIFORNIA

SEPTEMBER 18, 1992

4

5 -----

6

7 THE COURT: THE PEOPLE OF THE STATE OF CALIFORNIA
8 VERSUS ISHMAEL TURNER.

9

COUNSEL, STATE YOUR APPEARANCES, PLEASE.

10

MS. VANDERVEEN: SANDRA VANDERVEEN FOR THE PEOPLE.

11

MR. POMEROY: EDWARD POMEROY FOR THE DEFENSE.

12

13 THE COURT: ALL RIGHT. WE ARE HERE FOR THE
IMPOSITION OF SENTENCE ON MR. TURNER.

14

DO YOU WAIVE ARRAIGNMENT FOR JUDGMENT?

15

MR. POMEROY: YES, YOUR HONOR.

16

17 THE COURT: IS THERE ANY LEGAL CAUSE WHY SENTENCE
SHOULD NOT NOW BE BE IMPOSED?

18

MR. POMEROY: NO, YOUR HONOR.

19

THE COURT: WOULD YOU LIKE TO ADDRESS THE COURT?

20

21 MR. POMEROY: YES. YOUR HONOR. I HAVE REVIEWED
THE PROBATION REPORT WITH MY CLIENT AND ALSO THE PEOPLE'S
22 MEMORANDUM.

23

24 THERE IS NO QUESTION AS SET FORTH IN THE
MEMORANDUM AND IN THE PROBATION REPORT THAT THE CRIMES OF
25 WHICH MY CLIENT HAS BEEN CONVICTED ARE SERIOUS. THERE IS NO
26 QUESTION THAT HE WAS CONVICTED, OBVIOUSLY THAT IS WHY WE ARE

1 HERE.

2 HOWEVER, INSOFAR AS FINDING THERE IS NO MITIGATING
3 CIRCUMSTANCES IN THIS CASE, I THINK THE REPORT IS DEFICIENT.

4 FIRST OF ALL, MY CLIENT IS STILL A YOUNG MAN, 21
5 YEARS OLD AT THE TIME OF THIS OFFENSE. AND IN ADDITION, YOUR
6 HONOR, THERE WERE EXTENUATING CIRCUMSTANCES SURROUNDING THE
7 ALLEGED INCIDENT AS TO WHAT THE YOUNG LADIES WERE DOING OUT
8 THAT NIGHT, WHERE THEY WERE GOING, WHAT WAS THEIR INTENT, ET
9 CETERA. THE FACT THAT MY CLIENT HAD STEADFASTLY STAYED BY
10 HIS STORY OF CONSENSUAL INTERCOURSE IS NOT AN INDICATION OF A
11 LACK OF REMORSE, IT IS NOT AN INDICATION OF HIS CALLOUSNESS
12 IN THE MATTER, RATHER IS AN INDICATION OF HIS BELIEF IN HIS
13 INNOCENCE. THE FACT THAT THE JURY HAS FOUND HIM GUILTY DOES
14 NOT MEAN THAT HIS STORY IS NECESSARILY TOTALLY FALSE.

15 IN ADDITION, I THINK ONE OF THE FACTORS THE COURT
16 SHOULD LOOK AT IS THE SENTENCE OR DEAL WHICH WAS GIVEN TO THE
17 CO-DEFENDANT IN THE MATTER. 10 YEARS. 10 YEARS FOR OFFERING
18 TESTIMONY IN THE CASE AND NOT GOING TO TRIAL. WHEREAS MY
19 CLIENT, BY STANDING BY HIS RIGHTS, EXERCISING HIS RIGHTS AND
20 TESTIFYING AS HE BELIEVED TO BE THE FACTS, IS FACING MORE
21 THAN 100 YEARS IN THE CASE.

22 IT IS TRUE THAT THE VICTIMS WERE YOUNG. HOWEVER,
23 I THINK THAT IF COURT LOOKS BACK ON THE TESTIMONY AND THE
24 FACTS SURROUNDING THE CASE, THEIR YOUTH IS NO INDICATION THAT
25 THEY WERE NEVERTHELESS SOMEWHAT SOPHISTICATED AS TO WHAT
26 HAPPENS IN THE WORLD. REMEMBER THE TESTIMONY THEY WERE

1 SPECIFICALLY OUT LOOKING FOR BOYS, THEY WERE SPECIFICALLY OUT
2 LOOKING TO PARTY.

3 I WOULD ASK THIS COURT NOT TO IMPOSE THE UPPER
4 TERMS THAT THE PEOPLE HAVE SUGGESTED. RATHER, I WOULD LIKE
5 THE COURT TO IMPOSE THE LOWER TERMS, ALLOW MY CLIENT THE
6 OPPORTUNITY TO GET BACK IN SOCIETY AND LIVE WHATEVER IS LEFT
7 OF HIS LIFE PERHAPS MAKING A FRUITFUL LIFE AFTER HIS
8 DEPARTMENT OF CORRECTIONS TIME.

9 THANK YOU, YOUR HONOR.

10 MS. VANDERVEEN: YOUR HONOR, I AM ESSENTIALLY
11 PREPARED TO SUBMIT ON THE SENTENCING BRIEF THAT I FILED WITH
12 THE COURT. HOWEVER, I WOULD NOTE THAT AS TO REALLY THE
13 SINGLE FACTOR IN MITIGATION THAT MR. POMEROY HAS ARTICULATED,
14 THAT BEING THE FACT THAT THE DEFENDANT IS YOUTHFUL, IN FACT,
15 IN MY MIND, IS AN ADDITIONAL AGGRAVATING FACTOR, AND THE
16 REASON IS THAT THIS MAN HAS SHOWN THAT HE HAS ABSOLUTELY NO
17 CONSCIENCE, HE HAS NO HEART, HE HAS NO COMPASSION, AND HE IS
18 A DEPRAVED AND DANGEROUS MAN, AND THE SOONER HE IS ELIGIBLE
19 TO BE RELEASED FROM STATE PRISON, THE SOONER OUR COMMUNITY IS
20 PUT BACK AT RISK.

21 THERE IS NOTHING THAT THE MAN WILL NOT DO. AND HE
22 HAS ABSOLUTELY NO CONSIDERATION FOR THE SAFETY OR THE RIGHTS
23 OF OTHER HUMANS. I THINK HE SHOULD BE SENTENCED TO THE
24 MAXIMUM POSSIBLE SENTENCE UNDER THE LAW. AND I WILL SUBMIT
25 IT.

26 THE COURT: ALL RIGHT. HAVING READ AND CONSIDERED

1 THE PROBATION REPORT, THE SENTENCING MEMORANDUM WHICH WAS
2 FILED WITH THE COURT, AND WITH THE CLEAR MEMORY OF THE FACTS
3 OF THE CASE, THE COURT IS NOW READY TO IMPOSE SENTENCE.

4 FOR VIOLATION OF SECTION 664/288A(D), ATTEMPTED
5 FORCIBLE ORAL COPULATION IN CONCERT, THE DEFENDANT IS
6 SENTENCED TO THE AGGRAVATED TERM OF FOUR AND A HALF YEARS IN
7 THE DEPARTMENT OF CORRECTIONS PURSUANT TO 1170.1 OF THE PENAL
8 CODE.

9 THE COURT RELIES ON RULE 421(B)(5) IN THIS CHOICE:
10 THE DEFENDANT'S PRIOR PERFORMANCE ON PROBATION OR PAROLE WAS
11 UNSATISFACTORY.

12 THE COURT FURTHER FINDS THAT THE FOLLOWING COUNTS
13 FALL WITHIN THE MEANING OF 667.6(D) OF THE PENAL CODE WHICH
14 MANDATES FULL, SEPARATE AND CONSECUTIVE TERMS BE IMPOSED FOR
15 SEXUAL ASSAULTS COMMITTED ON SEPARATE VICTIMS, OR ON THE SAME
16 VICTIM ON SEPARATE OCCASIONS:

17 COUNT 13, THE FIRST ACT OF FORCIBLE ORAL
18 COPULATION IN CONCERT BY THE DEFENDANT ON IRENE;

19 COUNT 1, THE FIRST RAPE IN CONCERT OF ESTHER BY
20 HENDERSON IN WHICH THE DEFENDANT AIDED AND ABETTED;

21 COUNT 7, THE ACT OF FORCIBLE ORAL COPULATION IN
22 CONCERT BY THE DEFENDANT ON ESTHER COMMITTED AFTER THE
23 DEFENDANT AND HENDERSON FIRST TRADED VICTIMS;

24 COUNT 14, THE ACT OF FORCIBLE ORAL COPULATION IN
25 CONCERT BY HENDERSON ON IRENE COMMITTED AFTER THE DEFENDANT
26 AND HENDERSON FIRST TRADED VICTIMS IN WHICH THE DEFENDANT

1 AIDED AND ABETTED;

2 COUNT 15, THE ACT OF FORCIBLE ORAL COPULATION IN
3 CONCERT BY DEFENDANT ON IRENE COMMITTED AFTER THE DEFENDANT
4 AND HENDERSON TRADED VICTIMS A SECOND TIME;

5 COUNT 10, THE RAPE IN CONCERT OF ESTHER BY
6 HENDERSON IN WHICH THE DEFENDANT AIDED AND ABETTED, AFTER THE
7 DEFENDANT AND HENDERSON TRADED VICTIMS THE SECOND TIME;

8 COUNT 12, THE RAPE IN CONCERT OF ESTHER BY THE
9 DEFENDANT, AFTER THE DEFENDANT AND HENDERSON TRADED VICTIMS A
10 THIRD TIME;

11 AND COUNT 16, THE ACT OF FORCIBLE ORAL COPULATION
12 IN CONCERT BY HENDERSON ON IRENE COMMITTED AFTER THE
13 DEFENDANT AND HENDERSON TRADED VICTIMS A THIRD TIME IN WHICH
14 THE DEFENDANT AIDED AND ABETTED.

15 THE COURT BELIEVES BASED UPON THE EVIDENCE THAT IN
16 AFOREMENTIONED COUNTS THE DEFENDANT HAD A REASONABLE
17 OPPORTUNITY TO REFLECT UPON HIS ACTIONS BETWEEN EACH CRIME
18 AND NEVERTHELESS RESUMED HIS SEXUAL ASSAULTIVE BEHAVIOR.

19 THEREFORE ON COUNTS 1, 7, 10, 12, 13, 14, 15 AND 16, THE
20 DEFENDANT IS SENTENCED TO THE AGGRAVATED TERM OF NINE YEARS,
21 FOR EACH OFFENSE. EACH TERM TO RUN FULLY CONSECUTIVE TO THE
22 OTHER FOR A TOTAL OF 72 YEARS WHICH WILL BE SERVED
23 CONSECUTIVELY WITH THE SENTENCE ON COUNT 6.

24 THE COURT HAS CHOSEN THE AGGRAVATED TERM PURSUANT
25 TO RULE 421(B)(7): THE DEFENDANT HAS BEEN CONVICTED OF OTHER
26 CRIMES FOR WHICH CONSECUTIVE SENTENCES COULD HAVE BEEN

1 IMPOSED BUT FOR WHICH THE COURT INTENDS TO IMPOSE CONCURRENT
2 SENTENCES.

3 THE COURT FURTHER STATES THAT IF SECTION 667.6(D)
4 DID NOT APPLY TO THIS CASE, THE COURT WOULD IMPOSE FULLY
5 CONSECUTIVE SENTENCES FOR THE ABOVE-NAMED CRIMES PURSUANT TO
6 SECTION 667.7(C) FOR THIS REASON: RULE 425(A)(1), THE CRIMES
7 INVOLVED SEPARATE ACTS OF VIOLENCE AND THREATS OF VIOLENCE.

8 THE COURT WOULD NOT AND DOES NOT CHOOSE TO
9 SENTENCE THE DEFENDANT ACCORDING TO THE TERMS OF 1170.1 FOR
10 ANY OF THE OFFENSES OF WHICH HE STANDS CONVICTED IN THIS
11 MATTER FOR THIS REASON: RULE 421(A)(3), THAT THE VICTIMS
12 WERE PARTICULARLY VULNERABLE.

13 ON THE REMAINING COUNTS, THE COURT IMPOSES
14 SENTENCE ACCORDING TO THE TERMS OF 667.6(C) BECAUSE, AS SET
15 FORTH IN RULE 425(A)(5), THE CONVICTION FOR WHICH SENTENCES
16 ARE TO BE IMPOSED ARE NUMEROUS.

17 THE COURT FURTHER IS CHOOSING TO SENTENCE THE
18 DEFENDANT TO THE AGGRAVATED TERM ON THESE REMAINING COUNTS
19 BECAUSE, PURSUANT TO RULE 421(B)(2), THE DEFENDANT'S PRIOR
20 CONVICTION AS ADULT OR ADJUDICATIONS OF COMMISSION FOR CRIMES
21 AS A JUVENILE ARE NUMEROUS AND OF INCREASING SERIOUSNESS.

22 ON COUNT 2 THE DEFENDANT IS SENTENCED TO THE
23 AGGRAVATED TERM OF NINE YEARS. THIS TERM IS TO RUN
24 CONCURRENT WITH THE SENTENCE IMPOSED ON COUNT 1 BUT
25 CONSECUTIVE WITH COUNT 6. SENTENCE ON COUNT 2 IS STAYED
26 PENDING APPEAL ON COUNT 1, STAY TO BECOME PERMANENT UPON THE

1 COMPLETION OF THE SENTENCE ON COUNT 1.

2 ON COUNTS 3, 4 AND 5, THE DEFENDANT IS SENTENCED
3 TO THE AGGRAVATED TERM OF NINE YEARS. SENTENCES ON THOSE
4 COUNTS TO RUN CONCURRENT ONE TO THE OTHER, AND CONCURRENT TO
5 COUNT (7) BUT CONSECUTIVE TO COUNTS 6, 1 AND 2. SENTENCE ON
6 COUNTS (3, 4 AND 5) IS STAYED PENDING APPEAL OF COUNT 7, STAY
7 TO BECOME PERMANENT UPON THE COMPLETION OF THE SENTENCE ON
8 COUNT 7.

9 ON COUNTS 8 AND 9, THE DEFENDANT IS SENTENCED TO
10 THE AGGRAVATED TERM OF NINE YEARS. SENTENCES ON THOSE COUNTS
11 TO RUN CONCURRENT ONE TO THE OTHER AND CONCURRENT TO COUNT 12
12 BUT CONSECUTIVE TO COUNTS 6, 1, 2, 3, 4, 5 AND 7.

13 SENTENCE ON COUNTS 8 AND 9 IS STAYED PENDING
14 APPEAL ON COUNT 12, STAY TO BECOME PERMANENT UPON THE
15 COMPLETION OF THE SENTENCE ON COUNT 12.

16 ON COUNT 11, THE DEFENDANT IS SENTENCED TO THE
17 AGGRAVATED TERM OF NINE YEARS. SENTENCE ON THIS COUNT TO RUN
18 CONCURRENT TO COUNT 10, BUT CONSECUTIVE TO COUNTS 6, 1, 2, 3,
19 4, 5, 7, 8, 9, 12. SENTENCE ON COUNT 11 IS STAYED PENDING
20 APPEAL ON COUNT 10, STAY TO BECOME PERMANENT UPON THE
21 COMPLETION OF SENTENCE ON COUNT 10.

22 ON COUNTS 17, 18 AND 19, THE DEFENDANT IS
23 SENTENCED TO THE AGGRAVATED TERM OF NINE YEARS. THE
24 SENTENCES ON THOSE COUNTS TO RUN CONCURRENT ONE TO THE OTHER
25 AND CONCURRENT TO COUNT 16, BUT CONSECUTIVE TO THE COUNT 6,
26 1, 2, 3, 4, 5, 7, 8, 9, 10, 11 AND 12. SENTENCE ON COUNTS

1 17, 18 AND 19 IS STAYED PENDING APPEAL ON COUNT 16, STAY TO
2 BECOME PERMANENT UPON COMPLETION OF THE SENTENCE ON COUNT 16.

3 THE STAYED COUNTS 2, 3, 4, 5, 8, 9, 11, 17, 18 AND
4 19 ARE SENTENCED CONSECUTIVELY ON THE BASIS OF THE RULE
5 421(B)(1): THE DEFENDANT HAS ENGAGED IN A PATTERN OF VIOLENT
6 CONDUCT WHICH INDICATES A SERIOUS DANGER TO SOCIETY.

7 THE TOTAL TERMS OF IMPRISONMENT IS 76 YEARS AND
8 SIX MONTHS.

9 MR. TURNER, YOU ARE INFORMED THAT YOU HAVE A RIGHT
10 TO APPEAL FROM THIS SENTENCE. IF YOU WISH TO APPEAL YOU MUST
11 FILE A WRITTEN NOTICE OF APPEAL WITH THIS COURT WITHIN 60
12 DAYS FROM TODAY. IF YOU APPEAL AND YOU ARE UNABLE TO HIRE A
13 LAWYER, THE APPELLATE COURT WILL APPOINT A LAWYER TO
14 REPRESENT YOU ON APPEAL. YOU WILL ALSO HAVE A RIGHT TO A
15 FREE TRANSCRIPT AND RECORD OF THE NECESSARY PROCEEDINGS IN
16 THE COURT.

17 DO YOU HAVE ANY QUESTIONS ABOUT HOW YOU APPEAL?

18 YOU HAVE TO ANSWER EITHER YES OR NO.

19 THE DEFENDANT: YES.

20 THE COURT: DO YOU HAVE SOME QUESTIONS?

21 THE DEFENDANT: NO. NO.

22 THE COURT: DO YOU UNDERSTAND HOW YOU APPEAL?

23 THE DEFENDANT: YES.

24 THE COURT: ALL RIGHT. THE DEFENDANT IS REMANDED
25 TO THE CUSTODY OF THE SHERIFF FOR DELIVERY TO THE SAN QUENTIN
26 MEN'S RECEPTION CENTER WHERE HE WILL COMMENCE HIS TERM.

1 HE IS GIVEN CREDIT FOR TIME SERVED AS FOLLOWS:
2 192 ACTUAL DAYS, PLUS 96 GOOD TIME/WORK TIME DAYS FOR A TOTAL
3 OF 288 DAYS.

4 MR. POMEROY: YOUR HONOR, WE HAVE TO ADD FIVE
5 DAYS.

6 THE COURT: THAT IS RIGHT.

7 MR. POMEROY: SO IT WILL BE 196.

8 THE COURT: ALL RIGHT. 196 ACTUAL DAYS, PLUS 98
9 GOOD TIME/WORK TIME DAYS, FOR A TOTAL OF 294 DAYS CREDIT FOR
10 TIME SERVED.

11 TESTING, I THINK, NEEDS TO BE ORDERED AS WELL
12 WHICH WAS NOT DONE AT THE TIME THAT THE VERDICT WAS READ.
13 THE COURT ORDERS PURSUANT TO 290.2 --

14 MS. VANDERVEEN: I HAVE FORGOTTEN THE CODE
15 SECTIONS.

16 THE COURT: THE DEFENDANT SHOULD BE ORDERED AND IS
17 ORDERED TO SUBMIT TO AIDS TESTING AS WELL AS TO GENETIC
18 TESTING PURSUANT TO 290.2 OF THE PENAL CODE AND 1202.1,
19 1202.6 OF THE PENAL CODE. THOSE TESTINGS TO BE CONDUCTED IN
20 THE DEPARTMENT OF CORRECTIONS.

21 COURT IS IN RECESS.

22 (PROCEEDINGS CONCLUDED.)

23

24

25

26

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 COUNTY OF SAN MATEO
3 DEPARTMENT NO. 10 HON. JUDITH W. KOZLOSKI, JUDGE
4

5 THE PEOPLE OF THE STATE)
6 OF CALIFORNIA,)
7 PLAINTIFF)
8 VS.) NO. C-28824
9 ISHMAEL ZAKAT TURNER,)
10 DEFENDANT) REPORTER'S CERTIFICATE
11 STATE OF CALIFORNIA)
12) SS
13 COUNTY OF SAN MATEO)
14

I, PAMELA FISK, OFFICIAL REPORTER OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA, COUNTY OF SAN MATEO, DO HEREBY
CERTIFY THAT THE FOREGOING PAGES 1 THROUGH 9, INCLUSIVE,
COMPRIZE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE
PROCEEDINGS TAKEN IN THE MATTER OF THE ABOVE-ENTITLED CAUSE.

DATED: OCTOBER 26, 1990

PAMELA FISK, CSR # 1807
OFFICIAL REPORTER, SUPERIOR COURT

EXHIBIT

(#2)

1
2
3
4
5
6
7
**ENDORSED FILED
SAN MATEO COUNTY**

8 **MAY 24 2007**

9 *Clerk of the Superior Court
By JENNIFER ARNOTT
DEPUTY CLERK*

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF SAN MATEO

12 In re: Case No. SC-28824 A
13 HC-1890
14 ISHMAEL TURNER) **ORDER OF DENIAL**
15 On Habeas Corpus.)
16

17 The Court has received and reviewed the Petition for Writ
18 of Habeas Corpus of Petitioner, Ishmael Turner, filed April 10,
19 2007. The petition is hereby denied.

20 **FACTS AND ALLEGATIONS**

21 On August 19, 1992, a jury found Petitioner guilty of
22 twelve counts of rape in concert (PC § 261(a)(2)/264.1), five
23 counts of forcible oral copulation in concert (PC § 288a(d)),
24 one count of forcible sodomy in concert (PC § 286(d)), and one
25 count of attempted forcible oral copulation (PC § 664/288a(d)).

26 On September 18, 1992, Petitioner was sentenced to a total of
27 76 years, 6 months in prison: five consecutive 9-year upper
28 terms on each of five forcible oral copulation in concert
 charges, plus three consecutive 9-year upper terms for three of
 the forcible oral rape in concert charges, plus a consecutive 4

1 year, 6 month upper term on the attempted forcible oral
2 copulation charge. The sentences on the remaining counts were
3 ordered to run concurrent. In an unpublished opinion (A059163)
4 filed July 20, 1994 the Court of Appeal modified the judgment
5 to strike one count of rape in concert (for which a concurrent
6 sentence had been imposed) and otherwise affirmed. The Supreme
7 Court denied a petition for review on November 2, 1994.

8

9 Petitioner complains that his sentence was unlawful under
10 Cunningham v. California (2007) 127 S.Ct. 856. He requests that
11 he be resentenced accordingly.

12

13

DISCUSSION

14 The Cunningham decision is not retroactively applicable to
15 Petitioner. The opinion in Cunningham did not reflect whether
16 the US Supreme Court intended the decision to apply
17 retroactively, nor has this issue yet been decided by a
18 California appellate court. However, Cunningham was based on the
19 principles set forth in Blakely v. Washington (2004) 542 U.S.
20 296. The high court has not yet decided whether Blakely is to be
21 applied retroactively. However, other decisions binding on this
22 court hold that the principles announced in Blakely applied only
23 to cases not yet final when the opinion was issued. (See People
24 v. Amons (2005) 125 Cal.App.4th 855, 868; In re Consiglio (2005)
25 128 Cal.App.4th 511, 516.) Because Blakely did not apply to
26 cases that were final when the opinion was issued, and the
27 Cunningham decision is based on the principles set forth in

28

Blakely, Cunningham is not retroactive to Petitioner's case, which was final when the Cunningham decision issued.

DISPOSITION

When a petition for writ of habeas corpus fails to reveal sufficient facts which, if true, would establish a prima facie case for relief, summary denial is appropriate. (In re Clark (1995) 5 Cal.4th 750, 769.) For the foregoing reasons, the petition for writ of habeas corpus is hereby denied. 

Dated: 11/16/01

Judge of the Superior Court

AFFIDAVIT OF MAILING CASE NUMBER: SC028824A

DOCUMENT: Order of Denial, signed by Judge Stephen M. Hall on 05/24/07

I declare, under penalty of perjury, that on the following date I deposited in the United State Post Office Mail Box at Redwood City, California a true copy of the foregoing document, enclosed in an envelope, with the proper and necessary postage pre-paid thereon, and addressed to the following:

Ishmael Z. Turner CDC # H-49812
CSP – San Quentin 1-N-100 up
San Quentin, CA 94974

San Mateo County District Attorney's Office
400 County Center, 3rd Floor
Redwood City, CA 94063
[by hand delivery]

San Mateo County Private Defender Program
333 Bradford St.
Redwood City, CA 94063

Executed on May 24, 2007
At Redwood City, California

CLERK OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA

By: _____

Jennifer Arnott,
Superior Court Courtroom Clerk

EXHIBIT

(#3)

COPY

COURT OF APPEAL, FIRST APPELLATE DISTRICT
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102
DIVISION 1

F I L E D

In re ISHMAEL TURNER on Habeas Corpus.

JUL 25 2007

A118392
San Mateo County No. SC28824A

Court of Appeal - First App. Dist.
DIANA HERBERT

By _____
RECEIVED

BY THE COURT:

The petition for writ of habeas corpus is denied.

The justices participating in this matter were:

Presiding Justice Marchiano, Justice Swager and Justice Margulies

Date: JUL 25 2007

MARCHIANO, P.J.
P.J.

EXHIBIT

(#4)

S155162

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re ISHMAEL TURNER on Habeas Corpus

The petition for writ of habeas corpus is denied.

George, C. J., was absent and did not participate.

**SUPREME COURT
FILED**

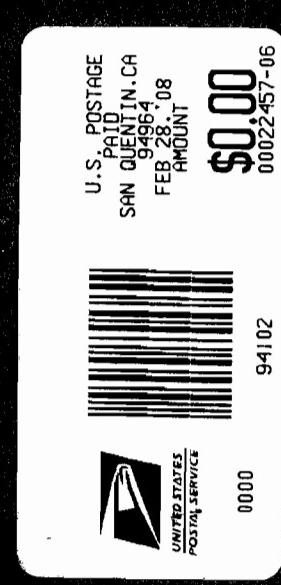
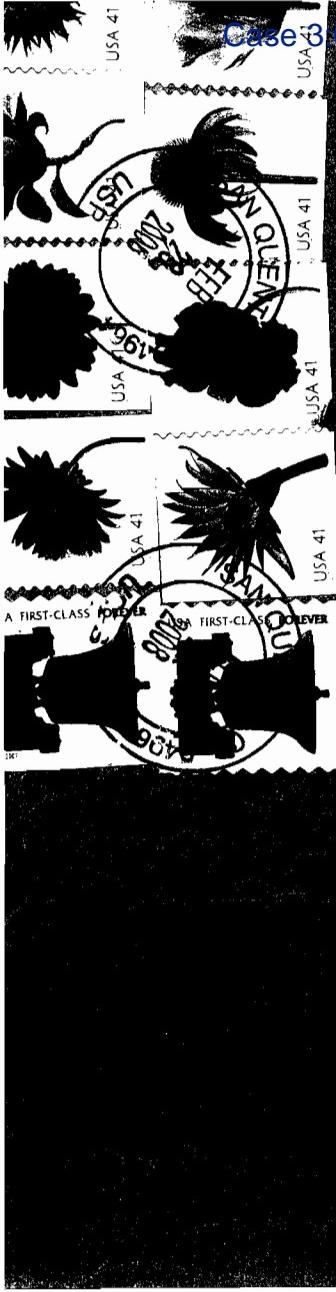
JAN 30 2008

Frederick K. Ohlrich Clerk

Deputy

BAXTER
Acting Chief Justice

Ishmael Turner H-49812
CSP-SO San Quentin 1-N-100 up
San Quentin, Ca. 94974



NORTHERN DISTRICT OF CALIFORNIA

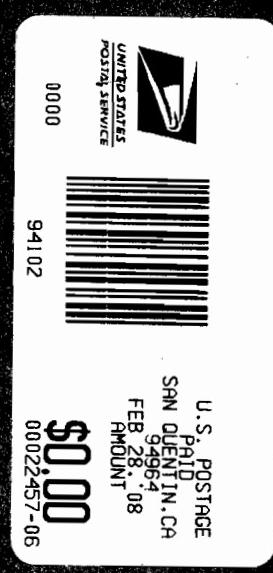
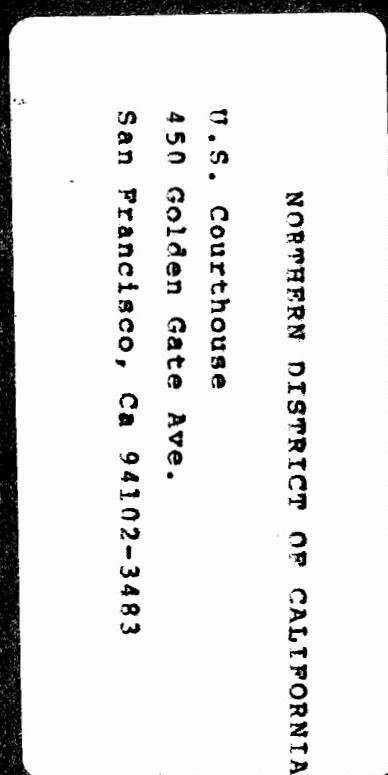
U.S. Courthouse
450 Golden Gate Ave.
San Francisco, Ca 94102-3483



Legal Mail

Oquentin 1-N-100 up
n, Ca. 94974

Legal Mail



Plaintiff Name: U.S. District Court, NDCA
Division: 3
Receipt Number: 34611016397
Cashier ID: almaceh
Transaction Date: 02/29/2008
Payer Name: Phil Angelides, Treasurer

WRIT OF HABEAS CORPUS
For: I TURNER
Amount: \$5.00

CHECK
Check/Money Order Num: 71317
Amt Tendered: \$5.00

Total Due: \$5.00
Total Tendered: \$5.00
Change Amt: \$0.00

C08-1226 MHP

Checks and drafts are accepted
subject to collections and full
cash it will only be given when the
check or draft has been accepted by
the financial institution on which
it was drawn.